

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DIGITAL MEDIA SOLUTIONS, LLC,)	
Plaintiff,)	
v.)	Case No. 1:19-CV-145
)	
SOUTH UNIVERSITY)	JUDGE DAN AARON POLSTER
OF OHIO, LLC, <i>et al.</i> ,)	MAGISTRATE JUDGE
Defendants.)	THOMAS M. PARKER

**UNITED STATES' STATEMENT OF INTEREST CONCERNING
ORDER TO APPEAR AT HEARING**

The United States respectfully submits this Statement of Interest, pursuant to 28 U.S.C. § 517,¹ to set forth its interests with respect to the Court's March 15, 2019 Order to Appear at Hearing (ECF No. 176) ("Order to Appear"), which purports to require the U.S. Department of Education ("Education") to produce a representative at a March 18, 2019 hearing ("Hearing").

The United States has determined that it is in its interest to appear at the Hearing and that its participation will serve the public interest. As offered by the Court, counsel for the United will appear by telephone, along with a representative from Education. The United States' participation at the Hearing will be voluntary and limited to the topics identified in the Order to Appear.

¹ Title 28, Section 517 of the United States Code provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." The filing of a Statement of Interest pursuant to this authority does not constitute intervention by the United States or render the United States a party to the litigation.

To the extent the Court desires additional information from the United States after the March 18 Hearing, the United States respectfully requests that the Court invite the United States to submit its views.²

March 18, 2019

Respectfully submitted,

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Assistant Attorney General

JUSTIN E. HERDMAN
United States Attorney

SUZANA K. KOCH
Assistant United States Attorney

/s/ Jonathan E. Jacobson
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Attorneys for the United States

² If the Court is interested in hearing from the United States on particular issues, it can identify those issues in an invitation to the United States to participate. To the extent parties to a proceeding seek information from the United States as a non-party, the appropriate mechanism to obtain such information is through a *Touhy* request. The Supreme Court has long recognized the authority of federal agencies to regulate the disclosure of information by their employees. *See United States ex rel. Touhy v. Ragen*, 340 US. 462, 468 (1951). Education's *Touhy* regulations specify the appropriate circumstances under which non-party information may be obtained from Education, including testimony from Education's employees. *See* 34 C.F.R. §§ 8.1-8.4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 18, 2019, I electronically filed the foregoing UNITED STATES' STATEMENT OF INTEREST CONCERNING ORDER TO APPEAR AT HEARING with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Jonathan E. Jacobson
Trial Attorney
U.S. Department of Justice